MONTANA LEGISLATIVE HISTORY

Chapter 53 19 77

Bill HB 72 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	_____	C	Hearing Date(s)	3/3/77	C
	1/13	C		_____	C
	_____	C		_____	C
	_____	C		_____	C
Date Out	_____	C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Hearing was actually 1/13 not 1/7

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 72	act to amend section, to require sheriffs and constables to post notices of sale upon request of a trustee, etc.	1-6	Ramirez	1-7	do pass	1-13
HB 77	act for revision of the laws relating to administrative procedures	1-7	Barrett	1-31 Monday	do pass amended	2-15
HB 79	to permit district judges to sentence persons convicted of felonies to imprisonment with no parole, etc.	1-7	Scully	1-13 Thursday	do pass amended	1-14
HB 80	Montana residential landlord and tenant act	1-7	Palmer	1-14 Friday	do pass amended	1-18
HB 91	relating to landlords & tenants & creating a landlords lien	1-7	Robbins	1-14 Friday	table	1-18
HB 92	relating to landlords & tenants & providing summary procedure under which landlord may terminate, etc.	1-7	Robbins	1-14 Friday	table 1-18 do not pass	2-19

HB BILL NO. 72

INTRODUCED BY Jack Ramirez

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 52-409, R.C.M. 1947, TO REQUIRE SHERIFFS AND CONSTABLES TO POST NOTICES OF SALE UPON REQUEST OF A TRUSTEE IN THE CASE OF A FORECLOSURE OF A TRUST INDENTURE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 52-409, R.C.M. 1947, is amended to read as follows:

"52-409. Notice of sale to be mailed, posted, and published. (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) ~~The~~ the grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) ~~Each~~ each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) ~~Each~~ each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request~~;~~;

(iv) ~~Any~~ any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) ~~Any~~ any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold~~.~~. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 three public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to ~~re-sell~~ resell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of

such person."

-End-

STATE OF MONTANA

REQUEST NO. 39-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 10, 19 77, there is hereby submitted a Fiscal Note for House Bill 72 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION

This bill requires sheriffs and constables to post notices of sale upon request of a trustee in the case of a foreclosure of a trust indenture.

FISCAL IMPACT

The proposed legislation will have no impact on state or local revenues or expenditures.

PREPARED BY THE DEPARTMENT OF REVENUE

Richard L. Brown

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: 1-13-77

JUDICIARY COMMITTEE

January 13, 1977

The regularly scheduled meeting of the House Judiciary Committee convened at 8 A. M. with Chairman Scully presiding. All members present with the exception of Colburn and Dussault, absent.

Scheduled for hearing were House Bills 72, 77 and 79. House Bill #77 was cancelled because the fiscal note was not yet available.

HEARING OPENED on House Bill 79. Nice-chairman Teague took over the meeting.

REPRESENTATIVE SCULLY, District #76, Sponsor. He explained the basic background for it and the reasoning behind it. This bill will allow district judges to sentence persons convicted of felonies to imprisonment with no possibility of parole or participation in the prisoner furlough. There would be a mandatory minimum. He mentioned that in Montana someone could be sentenced and be back on the street in a short time. He could end up searving only 1/5 of the sentence. He mentioned that Pat Ryan of Great Falls, a probation officer, was highly in support of this bill.

A judge can have three alternative. 1. raise the sentence, 2. lower the sentence, and 3. leave it as it is. Montana has done all three, but for the most part, they stay the same. I don't believe in a mandatory sentence, but this is one way to cover the alternatives.

He gave examples of actual cases, the use of a weapon, etc. Obviously there is a problem in that there are no two situations alike, and its obvious that discretion has to be used.

It would require the district judge to give mandatory flat time sentencing. You have to look at the process. The other alternative is to do away with the penalty form of system.

This is the only sentencing measure that makes sense. I hope you give it a great deal of thought and consideration. He talked about the sentence review board and explained how it works.

REPRESENTATIVE KENNERLY asked if it gives the judge more authority to do more straight sentencing.

REPRESENTATIVE SCULLY answered that they recognized that problem. There are also a lot of social and economic problems that went into that also.

The system is not infallible, but when you have a sentence review board, that process is a sufficient safeguard, and review is getting to be almost automatic. He gave examples of actual cases from his own experience.

He mentioned that a pre-sentence hearing can be requested by the judge, the individual or the board. He mentioned the cost of proper funding and the problem of trying cases.

There was comment about another similar bill introduced in the Senate by Senator Towe and Representative Scully and it was a mandatory sentencing bill.

REPRESENTATIVE HOLMES said about the Towe bill, that rather than having a parole board, it would be a service agency that would help the person ease his way back into society. It was again noted, that the sentence review board was the final check.

OPPONENT REPRESENTATIVE KIMBLE, he stated that he feels we have to be careful, especially in those areas that allow discretion to the judge. It creates a precedent in the state that might be difficult to overturn.

REPRESENTATIVE SCULLY made the comment that this is not a mandatory bill.

Hearing closed on House Bill #79.

HEARING OPENED On House Bill #72.

REPRESENTATIVE RAMIREZ, Chief Sponsor, district #64. This bill requires a sheriff or constable to post notice of sale upon the request of a trustee in the case of a foreclosure of a trust indenture. He discussed the bill and explained the various sections.

REPRESENTATIVE KEYSER asked who will pay the cost of the posting and Representative Ramirez stated that there is a general fee arrangement to take care of this. The sheriff will post it on the property to be sold.

There were no other proponents or opponents.

Hearing closed on House Bill #72.

JUDICIARY COMMITTEE

EXECUTIVE SESSION

The committee went into Executive Session following the regularly scheduled meeting January 11, 1977. Chairman Scully presiding.

REPRESENTATIVE KEYSER moved that House Bill #79 "Do Pass". The motion was seconded, discussion followed.

There was some speculation what this bill would actually do. CHAIRMAN SCULLY said this is the only bill that deals with flat time, or fixed time. This bill does not conflict with any other bill that has been introduced.

REPRESENTATIVE RAMIREZ, wondered if we might not get into a patchwork and we should consider all these bills together.

REPRESENTATIVE HOLMES asked how the work furlough program is now funded. Representative Dussault explained the program and how it works. She felt there should be a study to revise the criminal system. She made a motion to amend out the furlough program. The motion was seconded and called and the motion failed, with Representatives Holmes and Dussault voting yes.

REPRESENTATIVE HOLMES moved to pass for the day to allow time for further study. The motion was seconded and called and the motion failed.

REPRESENTATIVE RAMIREZ made a motion to amend subsection 3, line 25, page 3. Following line 24, strike: judgement and insert: judgment. This would correct the spelling of the word judgment. The motion carried with unanimous vote.

After some discussion it was decided to postpose action until later that day on House Bill #79.

CHAIRMAN SCULLY appointed a sub-committee to study House Bills #80, 91 and 92, all dealing with landlord and tenant relationships. The committee as appointed were: Representative Teague, Chairman, Representative Dussault, Representative Seifert and Representative Colburn.

Representative Seifert moved "Do Pass" on House Bill #72. The motion was seconded and the question called. The motion carried with a unanimous vote.

REPRESENTATIVE HAND moved that House Bill #22 be amended as follows: (copy attached).

The amendments carried with unanimous vote.

REPRESENTATIVE KEYSER made a motion that House Bill #22 "Do Pass" as amended. The motion was seconded, question called and the motion carried with note unanimous.

REPRESENTATIVE DUSSAULT made a motion that House Bill #39 "Do Pass". The motion was seconded, question called, and the motion passed with the note unanimous.

REPRESENTATIVE LORY made a motion to "Do Pass" as amended on House Bill 79. The motion was seconded and the question called. Carried with Kennerly, Courtney, Dussault and Holmes voting "No".

Committee staff attorney, Jim Gardner, reported back on House Bill #43. He explained that an attorney is not a judicial officer. Page 17 lines 8. Pages 17, 9 and 13. Who may be impeached? Heads of the departments are subject to impeachment.

Meeting adjourned 11:35 A. M.

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
H.B. 4	1-27-77	3-9-77	3-10-77					3-10-77	
H.B. 5	1-25-77	2-21-77	3-19-77					3-19-77	
H.B. 14	1-15-77	2-23-77	2-23-77				2-23-77		
H.B. 22	1-21-77	2-25-77	2-25-77				2-25-77		
H.B. 27	1-15-77	2-23-77	2-25-77					2-25-77	
H.B. 28	1-22-77	2-24-77	3-19-77		WITHOUT RECOMMENDATION 3-19-77				
H.B. 29	1-22-77	2-24-77	3-19-77					3-19-77	
H.B. 36	1-15-77	2-24-77	2-24-77				2-24-77		
H.B. 39	1-21-77	2-25-77	2-25-77					2-25-77	
H.B. 43	1-22-77	3-5-77	3-8-77					3-8-77	
H.B. 46	1-22-77	3-5-77	3-7-77					3-7-77	
H.B. 53	1-15-77	2-24-77	2-24-77				2-24-77		
H.B. 71	3-2-77	3-21-77	3-21-77				3-21-77		
H.B. 72	1-21-77	3-3-77	3-3-77				3-3-77		
H.B. 74	1-15-77	3-3-77	3-3-77					3-3-77	
H.B. 77	3-2-77	3-12-77	3-12-77					3-12-77	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

5

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 3, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:40 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All committee members were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Ramirez - District 64, Billings
John Cadby - Montana Bankers Assn.
Mike Griffith - Northwestern Bank, Helena
Gene Phillips - Conrad Bank of Kalispell
Mr. Lattin - Vice-pres., Conrad Bank of Kalispell
Cliff Christian - Montana Assn. of Realtors
Rod Wilson - Billings Chamber of Commerce
Rep. Bob Palmer - District 96, Missoula
Ruth Lange - Montana Assn. of Realtors
Bette Hostad - League of Women Voters of Motnana
Klaus D. Sitte - Montana Legal Services Assn.
Kitty Bomar - Montana Poverty Council
Eldon L. Piper - Montana Landlards Assn.
Mae Nan Ellingson - Montana Student Lobby
Carol J. Farris - Great Falls renter

CONSIDERATION OF HOUSE BILL 72:

Rep. Ramirez, sponsor of H.B. 72, said that it had to do with trust indentures and foreclosure of trust indentures, and that it calls for a Notice to be posted 20 days before sale. He told the committee that the Yellowstone County sheriff has refused to post the Notices of Sale although they are paid a fee of $2 for doing this and also get mileage.

DISPOSITION OF HOUSE BILL 72:

Senator Warden moved that H.B. 72 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 74:

Rep. Ramirez, sponsor of this bill, told the committee that it was one of two bills dealing with out-of-state lenders and that Montana banks sell mortgages to out-of-state lenders but service the accounts in Montana and, in this way, obtain more mortgage money to lend in Montana. However, Montana is not very attractive to these out-of-state lenders as they have to qualify in Montana. Therefore, this bill, in an effort to help this situation, has an exception in

HOUSE BILL NO. 72

INTRODUCED BY RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 52-409, R.C.M. 1947, TO REQUIRE SHERIFFS AND CONSTABLES TO POST NOTICES OF SALE UPON REQUEST OF A TRUSTEE IN THE CASE OF A FORECLOSURE OF A TRUST INDENTURE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 52-409, R.C.M. 1947, is amended to read as follows:

"52-409. Notice of sale to be mailed, posted, and published. (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) ~~the~~ the grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) ~~Each~~ each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) ~~Each~~ each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request; and

(iv) ~~Any~~ any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) ~~Any~~ any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold~~.~~. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least ~~3~~ three public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to ~~re-sell~~ resell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of

such person."

-End-